

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,

Defendants.

Civil Action No. 3:17-01665
Hon. David A. Faber

**MCKESSON CORPORATION’S RESPONSE TO PLAINTIFFS’
NOTICE OF DESIGNATED DEPOSITION TESTIMONY
AND EXHIBITS SUBMITTED BY PLAINTIFFS**

McKesson Corporation (“McKesson”) files this response to Plaintiffs’ Notice of Designated Deposition Testimony and Exhibits Submitted by Plaintiffs (“Notice”) (ECF No. 1490) in order to clarify two statements made by Plaintiffs in “Appendix B” to that Notice.

Plaintiffs’ Appendix B is labeled “Plaintiffs’ Master Deponent Exhibit List” (ECF No. 1490-32), and purports to identify exhibits submitted to the Court as part of the parties’ submission of deposition designations. The majority of these exhibits have not yet been admitted by the Court, and Appendix B purports to set forth the status of any outstanding objections to admission — *e.g.*, “Objection Pending” or “Submitted without objection.”

McKesson files this response to clarify the status of two exhibits included in Appendix B.

First, Plaintiffs twice identify Trial Exhibit P-16210 as having been submitted for admission by the Court with an “[o]bjection [by McKesson] [p]ending.” *See* ECF No. 1490-32 at 1, 4. This description omits the fact that Trial Exhibit P-16210 was excluded by the Court during live testimony on May 24, 2021, on the basis of hearsay and undue prejudice. *See* 5/24 Trial Tr. at 73:19–77:3; *id.* at 77:2–3 (“[T]here’s just so much in here that is just rank hearsay and I’m going to keep it out. The objection is sustained.”).¹ Plaintiffs did not seek reconsideration of the Court’s ruling excluding Trial Exhibit P-16210, and the time for any such motion has long passed. As such, Plaintiffs’ description of Trial Exhibit P-16210 as having been submitted with an “[o]bjection [p]ending”—as opposed to having already been excluded by the Court—is inaccurate.

Second, Plaintiffs twice identify Trial Exhibit P-00122 as having been submitted for admission by the Court with an “[o]bjection [by McKesson] [p]ending.” *See* ECF No. 1490-32 at 1–2. This description omits the fact that Trial Exhibit P-00122 was excluded by the Court during live testimony on May 24, 2021, on the basis of hearsay and pursuant to Federal Rule of Evidence 408. *See* 5/24 Trial Tr. at 105:11–106:1 (“These statements were made in the context of negotiations and they’re the position of the...lawyers on one side....”); *id.* at 107:2–3 (“It’s out Go on to your next point.”). Plaintiffs sought reconsideration of the Court’s ruling excluding Trial Exhibit P-00122, and that motion for reconsideration is currently pending. *See* ECF Nos.

¹ The Court did admit three pages of the document — the cover page, page 37, and page 46 — as a separate exhibit (P-16210A) for the limited purpose of notice. *See* 5/24 Trial Tr. at 77:6–79:9. McKesson does not object to the Court admitting Trial Exhibit P-16210A in lieu of Trial Exhibit P-16210 in concert with Plaintiffs’ deposition designations.

1436, 1465.² As such, Plaintiffs' description of Trial Exhibit P-00122 without reference to this prior ruling and/or pending motion for reconsideration is incomplete.³

Dated: August 18, 2021

Respectfully Submitted,

McKesson Corporation

By Counsel:

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² The Court held its order in abeyance pending receipt of this motion for reconsideration.

³ Plaintiffs also seek submission of Trial Exs. P-00118, P-00119, and P-00121 through their deposition designations. See ECF 1490-32 at 2–4. Each of these exhibits is also subject to the pending motion regarding Plaintiffs' attempt to introduce documents prohibited by Federal Rule of Evidence 408.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 18th day of August, 2021, the foregoing “MCKESSON CORPORATION’S RESPONSE TO PLAINTIFFS’ NOTICE OF DESIGNATED DEPOSITION TESTIMONY AND EXHIBITS SUBMITTED BY PLAINTIFFS” was served using the Court’s CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Timothy C. Hester
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